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JUN 16 2011

OFFICE OF PETITIONS

In re Application of :
Elsey, et al. :
Application No. 10/766,498 : **ON PETITION**
Filed: January 27, 2004 :
Attorney Docket No. 41698.1112 :
For: TECHNIQUE FOR EFFECTIVELY
PROVIDING CONCIERGE-LIKE
SERVICES IN A DIRECTORY
ASSISTANCE SYSTEM

This is a decision on the renewed petition under 37 CFR 1.181, filed February 16, 2011, requesting that the Office withdraw the holding of abandonment of the above-identified application.

The petition under 37 CFR 1.181 is **DISMISSED**.

Any reconsideration petition must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

The application became abandoned for failure to reply within the meaning of 37 CFR 1.113 to the final Office action, mailed April 9, 2010, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on July 10, 2010. A Notice of Abandonment was mailed on October 25, 2010.

Petitioners assert that the April 9, 2010 final Office action was not received by practitioner because the failure of the USPTO to enter a power of attorney and change of correspondence address, filed on June 12, 2008, resulted in the April 9, 2010 final Office action being directed to an out-of-date address. Therefore applicants requests withdrawal of the holding of abandonment.

MPEP Section 402.07 states that a power of attorney by an assignee of the entire interest revokes all powers of attorney given by an application and prior assignees if the assignee establishes their right to take action as provided in 37 CFR 3.73(b). See 324.

MPEP Section 324(V)(A) discusses positions that have apparent authority to sign a 3.73(b) statement on behalf of an assignee. The same logic applies to positions that have authority to sign a power of attorney.

MPEP 324(V)(A) states, with emphasis added,

The submission may be signed by a person in the organization having apparent authority to sign on behalf of the organization. 37 CFR 3.73(b)(2)(ii). An officer (chief executive officer, president, vice-president, secretary, or treasurer) is presumed to have authority to sign on behalf of the organization. The signature of the chairman of the board of directors is acceptable, but not the signature of an individual director. Modifications of these basic titles are acceptable, such as vice-president for sales, executive vice-president, assistant treasurer, vice-chairman of the board of directors. In foreign countries, a person who holds the title "Manager" or "Director" is normally an officer and is presumed to have the authority to sign on behalf of the organization. A person having a title (administrator, *general counsel*) that does not clearly set forth that person as an officer of the assignee is not presumed to have authority to sign the submission on behalf of the assignee. A power of attorney (37 CFR 1.32(b)(4)) to a patent practitioner to prosecute a patent application executed by the applicant or the assignee of the entire interest does not make that practitioner an official of an assignee or empower the practitioner to sign the submission on behalf of the assignee.

In the instant case, a Revocation of Power of Attorney with New Power of Attorney and Change of Correspondence Address executed by Zachely Green, Global General Counsel, was filed on June 12, 2008. The document was accompanied by a proper 3.73(b) statement executed by Attorney Sofer. Unfortunately, Mr. Green, as general counsel of an unspecified company, does not have apparent authority to bind the assignee, Grape Technology Group, Inc., as would an officer of the company.

In short, the Office received a revocation/power of attorney/change of correspondence address signed by an individual who lacked apparent authority to bind the assignee. Therefore, the Office was not in error when it did not enter the requested changes and the April 9, 2010 final Office action was properly mailed to the correspondence address of record. It is noted that three other Office actions were mailed to the correspondence address of record after the June 12, 2008 Revocation of Power of Attorney with New Power of Attorney and Change of Correspondence Address was filed, and applicant did not attempt to update the correspondence address when they timely responded to those Office actions. The petition to withdraw the holding of abandonment due to non-receipt is dismissed.

Petitioners are strongly encouraged to file a petition to revive under the unintentional standard of 137(b). The filing of a petition under 37 CFR 1.137(b) cannot be intentionally delayed and therefore must be filed promptly. A person seeking revival due to unintentional delay cannot make a statement that the delay was unintentional unless the entire delay, including the date it was discovered that the application was abandoned until the filing of the petition to revive under 37 CFR 1.137(b), was unintentional. A statement that the delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a petition for revival under 37 CFR 1.137(b).

As discussed above, Mr. Sofer has not been specifically empowered. However, in accordance with 37 CFR 1.34, the signature of Mr. Sofer appearing on the correspondence shall constitute a representation to the United States Patent and Trademark Office that he is authorized to represent the particular party in whose behalf he acts. If, Mr. Sofer desires to receive correspondence regarding this file, the appropriate power of attorney documents must be submitted. A courtesy copy of this decision is being mailed to Mr. Sofer. However, until otherwise instructed, all future correspondence regarding this application file will be directed solely to the above-noted correspondence address of record.

Further correspondence with respect to this matter should be delivered through one of the following mediums:


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By fax: (571) 273-8300
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By internet: EFS-Web
 www.uspto.gov/ebs/efs_help.html
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 at (866) 217-9197)

Telephone inquiries pertaining to this matter may be directed to the undersigned at (571) 272-3230.


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